87-322 (2)

Supreme Court, U.S.
FILED
AUG 26 1987
JOSEPH F. SPANIOL, JR.
CLERK

Case Number _____

IN THE

Supreme Court of the United States

October, 1987 Term

CHASE REVEL, INC., d/b/a ENTREPRENEUR MAGAZINE
Petitioner,

vs.

J.F. STRAW, d/b/a BUSINESS OPPORTUNITIES DIGEST
Respondent.

BRIEF IN OPPOSITION TO PETITIONERS PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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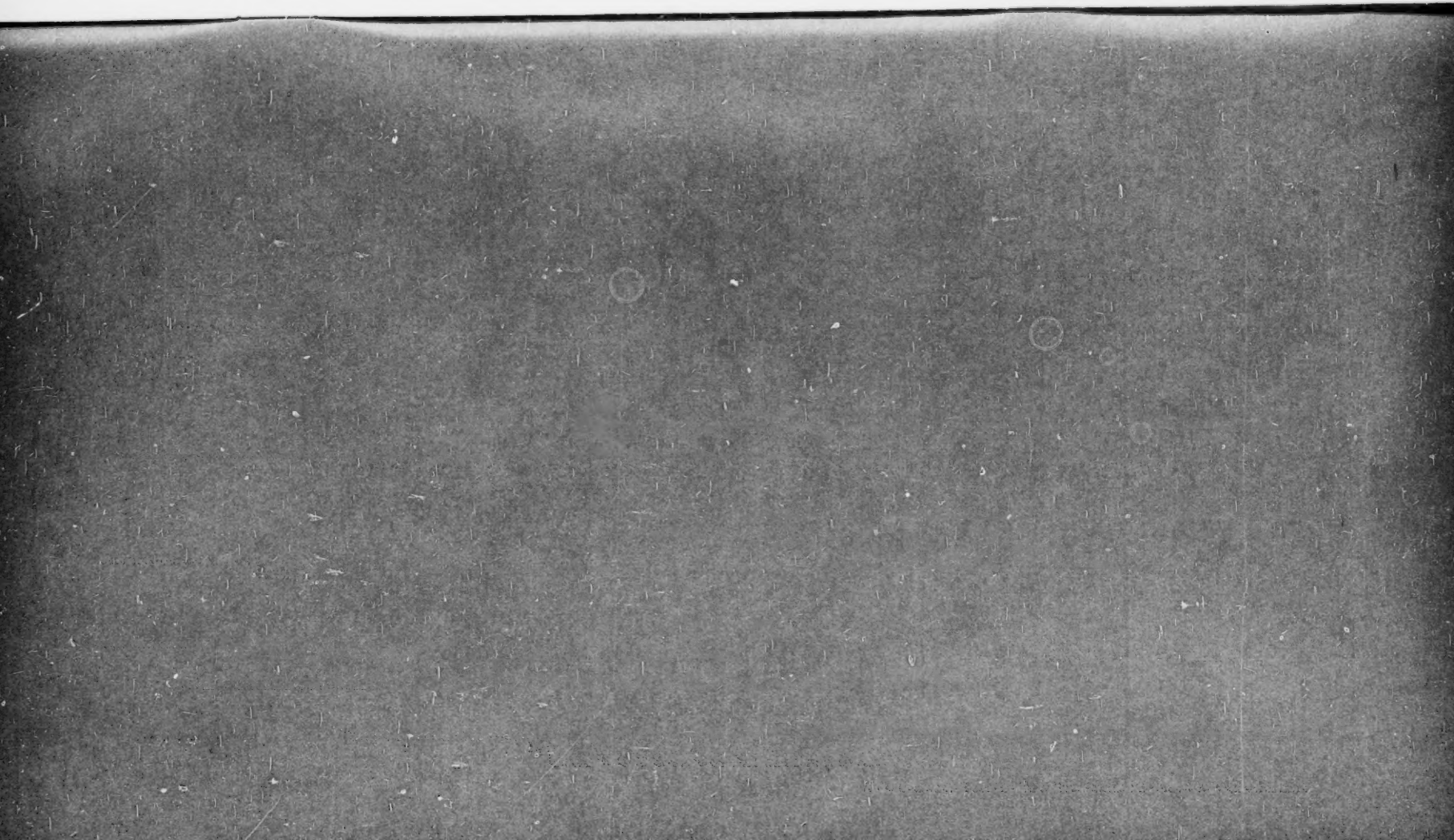

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OPINIONS OF THE COURT BELOW

The opinion below is as set out at Pages 20 et seq. of the Petitioners

Petition - J. F. Straw, d/b/a Business Opportunities Digest vs. Chase Revel, Inc. d/b/a Entrepreneur Magazine_____ F.2d 6th_____ (11th Circuit 1987) (Slip Op. P. 2119) (Number 86-85 24)

STATEMENT OF JURISDICTION

Respondent agrees that this Court has jurisdiction of this matter for the reasons set out in Petitioners Statement of Jurisdiction.

QUESTIONS PRESENTED FOR REVIEW

1.

J.F. Straw was at all time material herein a private figure as defined by the applicable libel laws.

The fact that J.F. Straw, the publisher of a limited circulation newsletter of 250 copies per month among a small sector of the community, published a truthful article that Petitioner was in Bankruptcy does not make him a public figure.

2.

The verdict for $25,000.00 compensatory damages for libel is constitutionally sound.

STATUTES INVOLVED

1.

Official Code of Georgia Annotated Section 51-5-1 which states:

"a) A libel is a false and malicious defamation of another, expressed in print, writing, pictures, or signs, tending to injure the reputation of the person and exposing him to public hatred, contempt, or ridicule."

2.

Official Code of Georgia Annotated Section 51-5-2 which states:

"a) Any false and malicious defamation of another in any newspaper, magazine, or periodical, tending to injure the reputation of the person and expose him to public hatred, contempt, or ridicule, shall constitute a newspaper libel."

3.

Official Code of Georgia Annotated Section 51-5-5 which states:

"In all actions for printed or spoken defamation, malice is inferred from the character of the charge. However, the existence of malice may be rebutted by proof. In all cases, such proof shall be considered in mitigation of damages. In cases of privileged communications, such proof shall bar a recovery."

STATEMENT OF THE CASE

Respondent respectfully submits that he agrees with Part 1 of Petitioners "Statement of the Case and Basis for Original Federal Jurisdiction."

However, Respondent shows that Part II - being the actual Statement of the Case is inaccurate and editorial in content. Therefore Respondent must submit his Statement of the Case as follows:

The Respondent published a newsletter with an annual circulation of some 3000. (T-14) In August 1982, Respondent published a short article stating that Petitioner Chase Revel, Inc. was in bankruptcy (T13, Plaintiff Ex.3). At trial, the fact that this article was true and that Chase Revel, Inc. was in bankruptcy was undisputed (T112).

The Petitioner publishes a magazine over the newstand and by subscription with an annual circulation of 1.2 million.

In retaliation for this truthful article, Petitioner printed the following article:

"CAVEAT EMPTOR"

When we started Entrepreneur Magazine about 10 years ago, practically nothing existed in our field. Now there are hundreds of publications. However, most offer very little help to anyone. The majority don't have any value and go out of business very quickly. A few steal our material but our attorneys stop them.

However, one has somehow survived even though it offers the least of any business publication. It is called Business Opportunities Digest and is published in some town in Tennessee by a man of unknown credentials: Mr. J. F. Straw.

It appears he subscribes to various city newspapers and extracts his "opportunities" from their classified sections or

accepts payment from people to editorialize their business opportunities. Either way, you would be much further ahead to read the classified business opportunities in your newspaper yourself. Especially for the price difference. Straw charges $36.00 for twelve 4 page issues. Buyer beware." (Plaintiff's Exhibit 1)

This factual article states that Respondent stole material from the Petitioner's magazine and prepared his publication by subscribing to newspapers and then extracting his opportunities from the classified sections thereof or by accepting payment from people to editorialize their business opportunities. These statements were false and defamatory.

The Petitioners article was prepared by Chase Revel and submitted to editor Ron Smith for publication. Ron Smith testified that he made no investigation of any kind as to the accuracy fo the articles content. (T120-121). Chase Revel did not testify at trial.

Respondent requested a retraction of the article, (Plaintiff's Exhibit 2) and Respondents witness Ron Gershen stated he requested an explanation of the charges in writing and by telephone (T-57). None of these were responded to (T-57).

The jury returned a verdict for the Respondent and against the Petitioner in the sum of $25,000.00. The punitive damages were reversed by the Eleventh Circuit Court of Appeals based on the charge and that issue has been remanded back to the Trial Court for further determination.

REASONS FOR DENYING THE WRIT OF CERTIORARI

A) SUMMARY:

It is respectfully submitted that the Petitioner has failed to comply with Rule 17.1 of this Court and failed to show any of the reasons set out therein as grounds for the granting of this Petition for the Writ. There are no conflicting decisions, there is no federal question which needs to be decided and no departure by the trial court or 11th Circuit from normal judicial proceedings. In fact this case contains no new or far reaching issues whatsoever.

In Gertz vs. Robert Welch, Inc. 418 U.S., 323 an attorney who published books and was acting in his capacity as an attorney in regard to the libel raised was held to be a private figure. Therefore it is clear that J.F. Straw, who published a 4 page newsletter with 3000 annual circulation and who published the fact that Petitioner was in bankruptcy is certainly a private figure.

This case is not one regarding an exchange of opinions.

The Respondent in his 4 page newsletter stated, as fact, that Petitioner was in bankruptcy. This fact is true and undisputed.

In retaliation thereto, Petitioner published in its national glossy magazine with 1.2 million circulation, the article involved in this suit (Plaintiff's Exhibit 1). It contains factual statements that Respondent stole material as well as other defamatory and libelous. There was no defense raised by Petitioner that the article was true.

This case is a libel case with no special features, the jury verdict and decision of the 11th Circuit are correct and there is no reason factually or legally for the Petition for Certiorari to be granted.

B. ARGUMENT AND CITATION OF AUTHORITY

i) PRIVATE FIGURE / PUBLIC FIGURE

The Respondent is clearly a private figure and may recover against the Petitioner for libel without showing actual malice.

In Gertz vs. Robert Welch, Inc. 418 U.S. 322, this court said it would not lightly assume that a person was a public figure. In that case, the person libeled was an attorney, he was an officer in organizations, he published books and he was acting in his capacity as an attorney in regard to the libel raised. It was held that he was not a public figure.

In Gertz vs. Welch supra it was held that in order for that attorney to be a public figure, he must have had general fame or notoriety throughout the community, even if that general fame or notoriety involved a limited range of issues.

The Respondent herein has no such general fame or notoriety — he is known in the sphere of publishing small newsletters — but he has no general fame or notoriety.

The alternate method of becoming a public figure as set out in Gertz v. Welch Supra is to inject yourself or be drawn into a particular public controversy.

In Loeb v. Globe Newspapers Co. 489 F. Supp 481, it was held that a publisher who regularly takes a strong public stand on controversial issues invites an expression of contrary opinion. It also held that those who thrust themselves into the forefront of a particular public controversy in order to influence resolution of the issues involved, invites attention from it. In that case there was a series of articles in regard to a Presidential Election.

In the present case, there are no such facts. The Respondent herein publishes a small newsletter in which he truthfully

stated that the Petitioner was in bankruptcy. The fact that the Petitioner was in bankruptcy had been published by various newspapers, including the Wall Street Journal — (Plaintiff's Exhibit 6).

This case does not involve a controversy. The article of the Respondent was not an attempt to influence opinion, ideas or strong public issues, nor did it invite response. Respondent could not have anticipated that by stating Petitioner was in bankruptcy, he would become a personal target of a blistering false character assasination by the Petitioner.

At the Trial Court level, the Petitioner claimed that the defamatory article was merely a reply to Respondent's article. Now he says it was an exchange of opinions. Neither of these postures is correct. The Defamatory article was designed to hurt and destroy the Respondent, was published without any verification of its contents and it did damage the Respondent.

The Respondent is clearly a private figure.

The 11th Circuit Court of Appeals is clearly correct in Paragraph IV of its opinion and a Writ of Certiorari should not be granted.

i. THE VERDICT IS CONSTITUTIONALLY SOUND

In this section of his argument, the Petitioner raises two issues — Opinion and Private Figure.

Clearly the defamatory article is not one of opinion — this fact was determined by the jury and should not be disturbed on appeal.

The article involved stated that the Respondent had stolen material from both the Petitioner and other persons. (Plaintiff's Exhibit 1).

"To impute the crime of theft to a person is actionable per se without proof of special damages" Melton v. Bow 241 Ga. 629, 247 SE 2d 100.

The Respondent presented evidence that the article was false. He denied that he had ever stolen any articles from the Defendant or any other magazine or that people paid him to editorialize their business opportunities. (T-30) There are other errors complained of in the article, but those three stated above are more than sufficient to result in the judgment obtained in this matter. To accuse someone of theft is not an opinion.

It is also to be noted that the protection provided by a statement of opinion applies only to public figures — Loeb vs. Globe Newspaper Company 489 F 2nd 481. Here the Respondent is a private figure.

In the second portion of this heading, the Petitioner again argues private figure / public figure, this has been addressed above and Respondent has clearly been shown to be a private figure.

Proof of actual malice need not be made but Respondent can recover absent showing of actual malice.

It is however to be noted that the jury did find $100,000. punitive damages which issue has been remanded back to the Trial Court for further trial.

The evidence presented does in fact support the actual malice standards of New York Times Co. v. Sullivan 376 U.S. 254 of actual malice or reckless disregard.

Here the Petitioner was clearly angry that the news had got out that it was in Bankruptcy. Although the Wall Street Journal issued the same statement, it would be too big to take on. So Petitioner viciously attacked a little tiny publisher in a clear attempt to destroy the Respondent. Chase Revel brought in the article and without any verification, the editor published it. Actual malice was shown.

However the Respondent is a private figure and to recover for compensatory damages no actual malice need be shown.

CONCLUSION

Clearly there is no ground or reason shown for the grant of the Writ of Certiorari. There are no conflicting decisions or federal questions. This case has always been purely a question of factual determination which has been decided against the Petitioner. Even though the elements of actual malice are shown, the Respondent is a private figure and may recover without showing actual malice.

Therefore the Petition for Writ of Certiorari should be denied.

Respectfully submitted this 25 day of August 1987.

BY: Adele P. Grubbs

ADELE P. GRUBBS

Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for the Petitioner with Three Copies of the foregoing Brief in Opposition to Petitioners Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit by depositing said copies in the United States Mail with adequate postage affixed thereon, to:

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This 25 day of August, 1987

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